

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

PHILLIP MCNEAL,

Plaintiff,

v.

Civil Action No. 2:09-0306

NELSON BROTHERS, LLC,
a Delaware Limited Liability, CATENARY COAL
COMPANY, LLC, a Delaware Limited Company,
EXPLO SYSTEMS, INC., a Louisiana Corporation,
ELITE COAL SERVICES, LLC, a West Virginia
Limited Company, and JOHN DOE, Corporation,

Defendants.

MEMORANDUM OPINION AND ORDER

This action was previously referred to Mary E. Stanley,
United States Magistrate Judge, who has submitted her Proposed
Findings and Recommendation pursuant to the provisions of 28
U.S.C. § 636(b) (1) (B) .

The court has reviewed the Proposed Findings and
Recommendation entered by the magistrate judge on January 13,
2010. The magistrate judge recommends that the defendants'
motion to dismiss, filed November 30, 2009, be denied. The
defendants have not objected to the Proposed Findings and
Recommendation. The court concludes the recommended disposition
is correct.

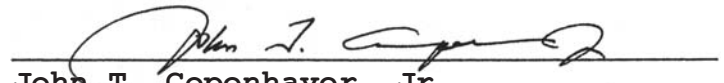
Accordingly, it is ORDERED that:

1. The Proposed Findings and Recommendation be, and it hereby is, adopted by the court;

2. The defendants' motion to dismiss be, and hereby is, denied.

The Clerk is directed to forward copies of this written opinion and order to the plaintiff, all counsel of record, and the United States Magistrate Judge.

DATED: February 23, 2010


John T. Copenhaver, Jr.
United States District Judge